

REMARKS/ARGUMENTS

Applicants hereby submit the following remarks and amendments in response to the Official Action mailed October 27, 2005.

Claims 1-4, 7, 8, 17-22 and 25-29 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,413,748 to Kessler, et al. Kessler discloses a pinch-cap for closing a container opening. The pinch cap includes a top wall 12 having a circular outer rim 14. Extending downward from a first side of top wall is a curved wall 22 and a side wall 26 that forms two D-shaped portions 16 and 18 separated by an "interruption area". The "interruption area" enables the two D-shaped portions to be flexed toward and away from one another. The two D-shaped portions 16 and 18 preferably include various ribs 76 and 78 that engage and underlay portions of the container to hold the cap in place in the container opening. The Examiner considers the side walls of the D-shaped portions to be equivalent to the ribs extending about the perimeter of the protective element as included in the present invention. A pair of flat walls 36 and 38, defining a handler for the cap, is disposed at a second side of the top wall 22. In order to seal the container, the pinched cap is placed over the container opening with the D-shaped portions being received within the opening such that they abut an inwardly-facing circumferential wall of the container.

Claim 1 of the present application includes the recitations wherein the protective element has at least one rib and at least one interrupted area disposed on a first side of the protective element and a gripping element located on a second side of the protective element. In order to clarify the

present invention and expedite the prosecution of the present application, Applicants have amended claim 1 to more clearly define the present invention. Thus, newly amended claim 1 includes recitations directed towards the container body having an outwardly facing rim and an inwardly facing wall partially defining an aperture. Claim 1 has also been amended to recite that the protective element, specifically at least a portion of the one "interrupted area", confronts the outwardly facing rim of the container body and the at least one rib abuts the outwardly facing rim. These recitations are clearly shown in FIGS. 1 and 2 of the present application. No new matter has been introduced into the application as a result of these amendments. With the inclusion of the recitation that the "interrupted area", or at least a portion of the "interrupted area" confronts the outwardly facing rim of the container body, claim 1 of the present application is clearly distinguished over the prior art cited. This is because, as I reiterated before, *Kessler* is limited to teaching a pinch cap having an "interruption area", that is received within the opening of the container as opposed to resting upon an outer rim of the container.

Applicants assert that the present amendments distinguish claim 1 as well as its dependent claims over that which is cited in *Kessler* and thereby request that the claims in the present application be deemed patentable and allowed.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he/she telephone applicant's attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: February 23, 2006

Respectfully submitted,

By _____

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